HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Petition No.6117 of 2007

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Between:

M/s. Transmission Corporation of A.P. Limited,
represented by its Financial Advisor & Chief
Controller of Accounts (A&E), Hyderabad. …Petitioner.

And

Commercial Tax Officer,
Khairatabad Circle,
Hyderabad & others.

….Respondents.

:: O R D E R ::

Counsel for the petitioner : Shri S. Suri Babu

Counsel for the respondents : Government Pleader for
Commercial
Tax Commercial Tax

29.03.2007

Per G.S. SINGHVI, CJ

This petition is directed against order dated 06.02.2007 passed by Additional Commissioner (CT) Legal in the office of Commissioner

of Commercial Taxes (respondent No.3), whereby he rejected the petitioner's prayer for staying the recovery of entry tax amounting to Rs.7,23,06,705/- in relation to assessment year 2004-05.

A perusal of the record shows that by an order dated 10.02.2006 passed in relation to the assessment year 2004-05, Commercial Tax Officer, Khairatabad Circle (respondent No.1) held that the petitioner is liable to pay tax of Rs.9,63,43,379/- under the Andhra Pradesh Tax on Entry of Goods into Local Areas Act, 2001 (for short 'the 2001 Act'). The appeal preferred by the petitioner was dismissed by Appellate Deputy Commissioner (CT), Panjagutta Division, Hyderabad (respondent No.2).

The petitioner challenged the aforementioned orders by filing revision before the Andhra Pradesh Sales Tax Appellate Tribunal (for short, 'the Tribunal'). It also applied for stay of the recovery of disputed tax. Respondent No.3 rejected the petitioner's prayer by recording the following observations and reasons:

> "……..The ADC (CT) dismissed the appeal stating that the appellant/petitioner is the importer as it has caused the disputed goods to be brought into the local area from outside the State for consumption and ultimately it is the owner of the goods in the State. Further stated that the grounds of appeal of the appellant and the arguments advanced by the Authorised Representative cannot stand the test of law as rightly observed by the assessing authority. The Appellate Authority strictly following the statutory law could not see merits in the contentions raised by the petitioner. Neither an iota nor title of evidence is furnished to controvert the findings of the lower authorities. It is necessary to go further into the merits as contravention of law attracts legal action. The grounds are too weak to sustain in law.
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> I am supported by the judgments of the Hon'ble Apex Court and jurisdictional High Court, M/s. EMPIRE INDUSTRIES LTD. vs. UNION OF INDIA 162 ITR 846 SC, and M/s. HERITAGE FOODS (INDIA) LTD., HYDERABAD vs. C.T.O. & 2 OTHERS in W.P. No.19466/2006.
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> On the BALANCE OF CONVENIENCE, the Hon'ble Supreme

Court in the case of ASST. COLLECTOR OF CENTRAL EXCISE, CHANDAN NAGAR vs. DUNLOP INDIA LTD., 154 ITR 172 held categorically that the balance of convenience certainly be held in favour of the Government. The relevant portion is extracted below:

> "There was no question of any balance of convenience being in favour of the respondent-Company. The balance of convenience was certainly in favour of the Government of India. Governments are not run on mere Bank Guarantees. We notice that very often some Courts act as if furnishing Bank Guarantee would meet the ends of justice. No governmental business or for that matter no business of any kind can be run on mere Bank Guarantees. Liquid cash is necessary for the running of a Government as indeed any other enterprise. We consider that where matters of public revenue are concerned, it is of utmost importance to realize that interim orders ought not to be granted merely because a prima facie case has been shown. More is required. The balance of convenience must be clearly in favour of the making of an interim order and there should not be the slightest indication of a likelihood of prejudice to the public interest. We are very sorry to remark that these considerations have not been borne in mind by the High Court and interim order of this magnitude had been granted for the mere asking. The appeal is allowed with costs."

In view of the above statutory position, and as the Apex Court held that balance of convenience in such circumstances must be held unto State, I do not see case for the petitioner to grant stay."

Learned counsel for the petitioner submitted that the vires of the 2001 Act is under challenge in a batch of writ petitions including the one filed by the petitioner, which are slated to be taken up for hearing on 16.04.2007 and that a Coordinate Bench has passed stay orders subject to the condition of deposit of 50% amount.

Learned Government Pleader for Commercial Tax admitted that the writ petition filed by the petitioner questioning the vires of the 2001

Act is pending adjudication. He also conceded that in other matters the recovery of tax has been stayed subject to the condition of deposit of 50% disputed amount.

In view of the above, the writ petition is disposed of in the following terms:

1) order dated 06.02.2007 passed by respondent No.3 declining the petitioner's prayer for stay shall stand modified;

2) the petitioner shall deposit 50% of the disputed tax payable in terms of the 2001 Act within a period of four weeks from today, and

3) if the petitioner fails to deposit 50% of the disputed tax, this petition shall be deemed to have been dismissed by the High Court and the respondents shall be free to take all legally permissible measures including the use of coercive methods for recovery of the total amount of tax.

As a sequel to disposal of the writ petition, W.P.M.P.No.7828 of 2007 filed by the petitioner for interim relief is disposed of as infructuous.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

29.03.2007
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